



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 24, 1994

Mr. Mark A. Anderson
Chappell & Handy
1800 City Center Tower II
301 Commerce Street
Fort Worth, Texas 76102-4118

OR94-660

Dear Mr. Anderson:

The City of DeSoto (the "city") received two requests for information concerning legal fees paid by the city. You ask whether this information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 28361.

One requestor asked for the "legal bills and itemized statements" from attorneys and law firms submitted to the city for the months of February through June, 1994. The other requestor asked for invoices and checks covering payment of invoices to your law firm showing the details of the services provided for January 1 through August 9, 1994. You state that the city has provided to the requestor the checks covering payment of invoices to your law firm. You have provided to this office for review, as responsive to the requests, the detailed statements your law firm sent to the city for the applicable time periods. You assert that this information is excepted from disclosure under section 552.103(a). To show the applicability of section 552.103(a), the city must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision Nos. 551 (1990); 350 (1982) at 3 (whether litigation is reasonably anticipated must be determined on a case-by-case basis.)

You state that your law firm represents the city in ongoing litigation, and that the bills at issue relate to that litigation. A review of the statements indicates that the detailed information in the statements at issue is related to the litigation. However, the other

information in the statements that concerns the hours worked, total fees, and general billing information must be released to the requestor.¹ Open Records Decision No. 233 (1980) at 2. We have marked the information that may be withheld from disclosure under section 552.103(a). We also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision No. 350 (1982) at 3.

You also contend that this information is excepted from disclosure under section 552.101 of the Government Code as information protected by the attorney-client privilege. The attorney-client privilege you discuss is most properly asserted in connection with section 552.107 rather than section 552.101. Open Records Decision No. 574 (1990). You relied upon earlier opinions of this office that held that a governmental body could withhold attorney fee bills under the attorney-client privilege. Open Records Decision Nos. 499 (1988); 399 (1983); 304 (1982). However, in Open Records Decision No. 589 (1991) this office stated that only client confidences and attorney advice, recommendation and opinion given within the context of an attorney-client relationship would be protected under section 552.107. Open Records Decision No. 574 (1990) implicitly overruled those earlier opinions. *Id.* at 1.

Section 552.107 protects information that reveals client confidences to an attorney or that reveals the attorney's advice, recommendation, and opinion. The application of section 552.107 to attorney fee bills must be determined on a case-by-case basis. Open Records Decision No. 589 (1991) at 1. The information in these records concerning attorneys time, fees and general billing information does not reveal client confidences or attorney advice, recommendation, and opinion. Since this office has already determined that the detailed information in these records is excepted from disclosure under section 552.103(a), we do not need to address your contention that the information at issue is excepted from disclosure under section 552.107.

We note that you also asserted that the information is excepted from disclosure by section 552.101 under the attorney work product exception recognized by the Texas Rules of Civil Procedure. In Open Records Decision No. 574 at 6, this office explicitly overruled prior opinions to the extent that they indicated section 552.101 incorporates the work product doctrine under the Texas Rules of Civil Procedure. Section 552.103(a) provides an exception for information created by an attorney in anticipation of litigation. *Id.*; Open Records Decision No. 429 (1985) at 4.

¹ We note that some of the billing statements submitted to this office do not contain a record of hours worked. If the hours were redacted before being sent to this office, we note that the hours must be included in the information released to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/MAR/rho

Ref.: ID# 28361

Enclosures: Marked documents

cc: Mr. M.P. Martin
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